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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JOSEPH LOCHUCH EWALAN,

11 Petitioner,

12 v.

13 DON HOLBROOK,

14 Respondent.

CASE NO. C20-1497JLR

ORDER ADOPTING REPORT
AND RECOMMENDATION

15 This matter comes before the court on: (1) Petitioner Joseph Lochuch Ewalan's
16 motion to expedite his release pending the resolution of his 28 U.S.C. § 2254 petition for
17 a writ of habeas corpus (Mot. (Dkt. # 44); Reply (Dkt. # 48));¹ (2) Respondent Don
18 Holbrook's response (Resp. (Dkt. # 46)); (3) the report and recommendation of United
19 States Magistrate Judge S. Kate Vaughan (R&R (Dkt. # 56)); and (4) Mr. Ewalan's
20 //

21 ¹ Mr. Ewalan also made two supplemental filings in support of his motion. (*See* Motion
22 Re-Reply (Dkt. # 53); Re-Reply (Dkt. # 54).) Although Dkt. # 53 is titled as a motion, it does
not appear to seek new or additional relief. (R&R at 1.)

1 objection thereto (Obj. (Dkt. # 57)). Having carefully reviewed those documents, the
2 relevant portions of the record, and the applicable law, the court ADOPTS the report and
3 recommendation (Dkt. # 56), DENIES Mr. Ewalan's motion for releasing pending
4 resolution of his 28 U.S.C. § 2254 habeas petition (Dkt. # 44), and further STRIKES the
5 motion designation on Mr. Ewalan's filing titled "motion: re-reply to respondents'
6 answer to the motion to expedite petitioner's release from custody" (Dkt. # 53).

7 A district court has jurisdiction to review a Magistrate Judge's report and
8 recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "The district judge must
9 determine de novo any part of the magistrate judge's disposition that has been properly
10 objected to." *Id.* The court reviews de novo those portions of the report and
11 recommendation to which specific written objection is made. *United States v.*
12 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Magistrate Judge Vaughan
13 recommends denial of Mr. Ewalan's motion because: (1) he "has not established at this
14 juncture that he is likely to succeed on the merits of his [habeas] Petition"; and (2) "even
15 if [he] could show a likelihood of success . . . , he fails to demonstrate that special
16 circumstances exist such that [he] is entitled to immediate release from custody prior to
17 resolution of his habeas petition." (R&R at 4.) Mr. Ewalan objects to both conclusions.
18 (Obj. at 2.)

19 Magistrate Judge Vaughan also notes that Mr. Ewalan "presents no medical
20 evidence indicating the nature or severity of" the medical conditions on which he
21 partially relies in arguing for release pending disposition of his habeas petition. (R&R at
22 5.) Mr. Ewalan does not contest this finding but rather asserts that the court should "(1)

1 either order [the Department of Corrections] medical department to forward [sic] Mr.
2 Ewalan all medical diagnosis records . . . or (2) allow more time for Mr. Ewalan to file
3 public disclosure of his medical record.”² (Obj. at 3-4.) Magistrate Judge Vaughan,
4 however, accepted, for purposes of evaluating his motion, Mr. Ewalan’s assertions about
5 his health and vulnerability to COVID-19. (R&R at 5.) Thus, Mr. Ewalan’s suggestion,
6 even if adopted, would not alter Magistrate Judge Vaughan’s recommendation that his
7 motion be denied.

8 The court has independently reviewed Mr. Ewalan’s objections and arguments and
9 agrees with Magistrate Judge Vaughan’s analysis and conclusions stated in the report and
10 recommendation. Accordingly, the court ADOPTS the report and recommendation (Dkt.
11 # 56) in its entirety, DENIES Mr. Ewalan’s motion (Dkt. # 44), and DIRECTS the Clerk
12 to STRIKE the motion designation on Mr. Ewalan’s filing titled “motion: re-reply to
13 respondents’ answer to the motion to expedite petitioner’s release from custody” (Dkt.
14 # 53). The Clerk is further DIRECTED to send copies of this order to the parties and to
15 Magistrate Judge Vaughan.

16 Dated this 9th day of December, 2021.

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18 JAMES L. ROBART
19 United States District Judge

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21 ² The court declines to construe these suggestions as a motion. Mr. Ewalan has proven
22 himself capable of formulating motions to pursue evidence he feels is missing from the record.
(*See, e.g.*, Mot. to Correct Possible Incomplete Record (Dkt. # 17); Mot. to Unseal State
Documents (Dkt. # 20); Mot. to Produce Tr. (Dkt. # 39).)